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CHANDIGARH ADMINISTRATION
HOSPITALITY DEPARTMENT

Notification

The 1st October, 2021

No. HO-DH-2021/2812.—In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, read with Govt. of India, Ministry of Home Affairs, Notification bearing No. SO. 3267, dated 01.11.1966, the Administrator, Union Territory, Chandigarh hereby makes the following rules, regulating the method and further to amend Chandigarh Administration, Hospitality Department (Protocol Wing) (Group 'C') Recruitment Rules, 2017 namely :—

1. (1) **Short title and commencement :**

- (i) These rules may be called the Chandigarh Administration, Hospitality Department (Protocol Wing) (Group 'C') (1st amendment) Rules, 2021.
- (ii) They shall come into force on the date of publication in the official gazette.

2. In the said rules, against the post of Clerk-cum-Assistant Protocol Officer in Schedule appended to these rules, for the Column No. 8 and 11 the following shall be substituted :—

Column No. of RR's	Column description	Existing terms & conditions	Substituted terms & Conditions
8	Whether age and educational qualifications prescribed for Direct Recruits will apply in the case of promotes	"Not Applicable"	(i) Age- No (ii) Education Qualification - Yes.

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Column No. of RR's	Column description	Existing terms & conditions	Substituted terms & Conditions
11	In case of recruitment by promotion/deputation/transfer is to be made	<p>By promotion : From amongst Telephone Operators, Head Cook, Steward and Butler having 15 years regular service in the cadre after appointment thereto who possess the educational qualification prescribed for Direct Recruitment under Column No. 7</p> <p>Note :—Candidate should complete atleast one course from National Institute of Electronics and Information Technology (NIELIT) as per DOP letter dated 21st April, 2016.</p>	<p>By Promotion : From amongst telephone operators, Head Cook, Steward and Butler having Twelve years regular service in the cadre after appointment thereto, who possess the education qualification prescribed for direct recruitment under column (7)</p> <p>Note:—Candidate should have completed ICT skill training "Course on Computer Concepts (CCC), 80 hours" as per the instructions issued by Chandigarh Administration, Department of Personnel & Training <i>vide</i> letter No. 28/69 IH(12)Pers. & Trg.-2019/17927, dated 25.11.2019."</p>

YASHPAL GARG, IAS,
Secretary Hospitality,
Chandigarh Administration.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 28th September, 2021

No. 13/1/9793-HII(2)-2021/10916.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 36/2015, dated 27.08.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BHARTI, EX-RETAIL EXECUTIVE, DTDC COURIER, SCO NO. 223, SECTOR 37-C, CHANDIGARH RIO HOUSE NO.2540, SECTOR 40-C, CHANDIGARH (Workman)

AND

1. DTDC COURIER, SCO NO.267, SECTOR 35-C, CHANDIGARH THROUGH ITS AGM MR. YADWINDER SINGH TIWANA.
2. PRAVEEN, H.R. MANAGER, DTDC COURIER, SCO NO.267, SECTOR 35-C, CHANDIGARH.
3. ANUPAMA BAKSHI, SENIOR EXECUTIVE (WORKING AS BRANCH MANAGER), DTDC COURIER, SCO NO.223, SECTOR 37-C, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that she was appointed as Retail Executive in Grade of S001A with effect from 05.04.2013 at Mohali Branch and was confirmed with effect from 05.10.2013 by the management. There was no complaint against the work & conduct of the workman while discharging her duties upto the full satisfaction of the management. Thereafter she was transferred from Mohali to Chandigarh Branch and since then she was working as Retail Executive at Sector 37, Chandigarh. There was no complaint against the workman. She was intentionally transferred by the management from Chandigarh Office to Amritsar Branch just to disturb her family life. The workman was never served with any notice for her transfer from Chandigarh to Amritsar. The workman is a lady and her daughter is doing her studies at Chandigarh and there is no other female member in the family to look after entire family. She was being transferred due to Ms. Anupama Bakshi, who was having some personal grudge with the workman, only with a view to harass and humiliate and to disturb the matrimonial life of the workman. The workman wrote application for medical leave from 11.08.2014 till 22.08.2014 and during the leave period the management sent a letter dated 18.08.2014 disclosing that she was transferred to Amritsar Branch with effect from 10.08.2014. At the time of illegal transfer of the workman no prior notice of intimation was sent to her and she was not paid any retrenchment compensation as provided under Section 25-F of the ID Act. The workman had completed 240 days in a year preceding her date of termination of services. Ultimately, it is prayed that the workman be reinstated at her post in Chandigarh with full back wages and all other attendance benefits.

3. The management contested the case of the workman and filed written statement raising preliminary objection that no punishment has been awarded to the workman by transferring her services and transfer of the workman is as per her appointment letter. She was well informed regarding her transfer on 23.08.2014 and one of such letter dated 25.08.2014 posted through registered post process by the company has been refused to receive by the workman. The workman abused and used filthy language in the office of the company at Sector 37 as well as at Sector 35-D on 23.08.2014, after receiving the letter of transfer so transfer order is prior to incidence as such question of imposing any punishment against the workman does not raise. The workman

was appointed with the condition written in the appointment letter regarding transfer at the sole discretion of the company and the same was accepted by the workman with free will and consent and without pressure of any kind. On merits, it is pleaded that transfer of the workman was totally legal whereas the workman is doing illegalities by not joining the post according to rules and regulation of the appointment letter of the company. No prior sanction has been taken by the workman for any leave. The company suffered financial losses due to non-joining of the workman as per transfer order and absence. The workman reported for duty after twelve days that is at Chandigarh. Provisions of Section 25-F of the ID Act are not applicable in the case of the workman as she was transferred and not retrenched and no punishment has been imposed upon the workman. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be rejected.

4. The workman filed replication reiterating the averment of her case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Relief.

5. Earlier none has appeared on behalf of the parties as such the present industrial dispute was declined *vide* award dated 16.12.2016. Thereafter a miscellaneous application was filed by the workman for restoration of the present industrial dispute, which was allowed *vide* order dated 04.03.2020 and the present industrial dispute was ordered to be restored at its original and *ex parte* order and subsequent award dated 16.12.2016 was set aside.

6. In support of the case, the workman stepped into the witness box as AW1 and closed the evidence. On the other hand, the management examined Shri Asheesh Sharma - Assistant Manager (HR) as MW1. closed the evidence.

7. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No.1 :

8. Onus to prove this issue was on the workman and to discharge the same the workman examined herself as AW1 and deposed that she was appointed as Retail Executive with effect from 05.04.2013 at Mohali branch and confirmed with effect from 05.10.2013 by the management. Copy of appointment letter and confirmation letter is Exhibit 'C1' & 'C2'. She was transferred from Mohali to Chandigarh branch. She was intentionally transferred by the management from Chandigarh office to Amritsar branch just to disturb her family life. She was never served by any notice for her transfer. She is lady and her daughter is doing her studies at Chandigarh and there is no other female member in the family to look after entire family. She further deposed that she had worked with the management with full devotion and honesty and there was no even a single complaint against her. She was being transferred due to Ms. Anupama Bakshi, who was having some personal grudge with her, only with a view to harass and humiliate and to disturb the matrimonial life. She had written application for medical leaves from 11.08.2014 till 22.08.2014. Copy of the same is Exhibit 'C3'. During the leave period, the management send a letter dated 18.08.2014 discharging that the workman has been transferred to Amritsar Branch with effect from 10.08.2014. Copy of medical record and transfer letter is Exhibit 'C4' and 'C5'. She further deposed that she approached Conciliation Officer-cum-Assistant Labour Commissioner, Union Territory Chandigarh for which no settlement made possible within stipulated period of 45 days so the matter was referred to this Court for further action. Copy of the demand notice is Exhibit 'C6'. At the time of her illegal transfer, no prior notice of intimation was sent to her and she was not paid any advance TA / DA etc. nor retrenchment compensation was provided under Section 25-F of the ID Act. She had completed 240 days in a year particular proceedings to the date of her illegal termination of service.

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9. Learned representative for the workman has argued that the workman was appointed as Retail Executive with effect from 5th April 2013 and confirmed on 05.10.2013. Work & conduct of the workman was satisfactory. She was transferred to Mohali to Chandigarh branch since then the workman was working as Retail Executive at Chandigarh branch at Sector 35 and 37 and she was working there with full devotion but she was intentionally transferred by the management from Chandigarh office to Amritsar. No notice of her transfer was served and her transfer was done due to personal grudge with the workman with a view to harass and humiliate and to disturb the matrimonial life of the workman. He further argued that the workman wrote application for medical leave from 11.08.2014 to 22.08.2014 which was not considered rather the workman has been transferred on 18.08.2014 with effect from 10.08.2014. Hence, the transfer of the workman was without notice and the workman had completed 240 days in the preceding year to the date of her illegal, unwarranted & arbitrary termination of service. She is entitled for reinstatement. Learned representative for the workman has relied upon citations **B. Varadha Rao Versus State of Karnataka, (1986)4 SCC 1131**. He further argued that a person cannot be transferred in the middle of academic year. He prayed reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, the management examined Shri Asheesh Sharma - Assistant Manager as MW1, who deposed that the company had appointed the workman as Retail Executive with effect from 05.04.2013 at Mohali branch. Copy of appointment letter is Exhibit 'R1'. After some time the company decided to transfer the workman to Chandigarh branch and keeping in view the good performance & behavior of the workman, she was promoted to the post of CSS Executive. He further deposed that the workman remained absent from 11.08.2014 to 22.08.2014 without any prior sanction of the authority and reported back on 23.08.2014. In view of the business exigency, the workman was transferred from Chandigarh to Amritsar *vide* transfer letter dated 18.08.2014. Copy of transfer letter dated 18.08.2014 is Exhibit 'R3'. He also deposed that the workman was transferred from Chandigarh branch to Amritsar branch as per Clause 6 of the appointment letter and she was being transferred as the post of Retail Executive was abolished due to certain business exigency. The workman after duly receiving the transfer letter did not join her duty at Amritsar Branch due to which the company had faced huge financial loss. Rather, she after coming back from leave on 23.08.2014 abused and used filthy language in the office of the company at Sector 37 branch as well as in Sector 35 branch. On 25.08.2014 the workman was issued a show cause notice for her absence without leave, misconduct and using abusive language for senior management. No reply was given by the workman. Copy of show cause notice is Exhibit 'R4'. He further deposed that the workman was only transferred from Chandigarh to Amritsar and she was neither retrenched from her duties nor any punishment was imposed upon her by the company so Section 25-F of the ID Act is not attracted in the present case.

11. Learned representative for the management has argued that the workman was transferred from Chandigarh branch to Amritsar as per appointment letter and due to abolition of the post of Retail Executive due to administrative reasons. The present case is not a case of retrenchment. He further argued that the workman remained absent from duty from 11.08.2014 to 22.08.2014 without taking any leave and leave applied later on by the workman has not been sanctioned by the management. In the mean time she was transferred from Chandigarh to Amritsar so question of issuing termination letter to the workman does not arise. He prayed for dismissal of the present industrial dispute.

12. I have very thoughtfully considered the rival contentions of both the sides. Admittedly, the workman was appointed as Retail Executive at Mohali branch on 05.04.2013 and later on her services were confirmed on 05.10.2013. The main averment of the workman was that she has been intentionally transferred, she had applied for leave but her leave was not taken into consideration and consequently she filed the present industrial dispute that she has been illegally terminated. Meaning thereby the workman in one way challenging her transfer illegally in his claim statement on the other hand she is alleging that she has been illegally terminated. The workman has proved on file Exhibit 'C1' appointment letter. Clause 6 of the appointment letter is **"Your services are liable to be transferred to any of the Offices/Divisions/Departments/Group of Companies of the organization at the sole discretion of management."** This fact is admitted

by the workman during her cross-examination that she is well-conversant with the Clause 6 of the appointment letter. Hence, admittedly the workman has been transferred from Chandigarh to Amritsar but the workman has failed to prove on record how her transfer is illegally and being made on personal grudge. There is no iota of evidence produced by the workman that there was any personal grudge with the workman whereas she is relying upon the citation titled as **B. Varadha Rao Versus State of Karnataka (supra)** but this citation is not directly applicable in the present case in hand as admittedly the workman has been transferred but in the citation it is held that frequent transfer is vitiated by *mala fide*. There is no frequent transfer in the present case and she was transferred first time on administrative ground. Secondly, learned representative for the workman has argued that an employee could not be transferred in the middle of an academic session. But, the workman has failed to prove on record in evidence that she has been transferred in the middle of academic session. No evidence has been led by her to prove this fact rather the management has made clear that her transfer has been made as per Clause 6 of the appointment letter Exhibit 'C1'.

13. Admittedly, she has been transferred from Chandigarh branch to Amritsar but the workman has not joined back at the place of new posting. She has taken plea that she has been terminated by the department but no termination letter has been placed on record or proved by the workman. As per averments of the management no termination is ever been made by them and no termination letter has been issued to her rather she had not joined her duties after being transferred from Chandigarh to Amritsar. The workman is taking plea that she had already applied leave from 11.08.2014 to 22.08.2014 *vide* Exhibit 'C3' but from the bare perusal of the medical leave application moved by the workman is un-dated whereas second leave application for the period from 25.08.2014 to 09.09.2014 was moved 26.08.2014 i.e. after the date of leave. Further Exhibit 'C4' are mere prescription slips of Government Multi Specialty Hospital, Sector 16, Chandigarh. No medical certificate has been attached and proved on file by the workman. In transfer letter Exhibit 'C5' it is duly mentioned that due to business exigency the workman was being transferred to Amritsar branch.

14. So, in view of the aforesaid discussion, I am of the considered view that this is a clear cut case of transfer of the workman from Chandigarh to Amritsar and the workman has been transferred, as per condition mentioned in Exhibit 'C5' i.e. transfer letter. Moreover, the workman has not taken sanction before applying the leave and she has not joined her new place of posting after receiving the transfer order. Hence, no termination letter has ever been issued by the management to the workman. So, retrenchment provisions under Section 25-F of the ID Act does not applicable here. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

15. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 27th August, 2021

(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal &
Labour Court,
Union Territory Chandigarh.
UID No. PB0095

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 16th September, 2021

No. 13/1/9790-HII(2)-2021/10363.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 6/2017, dated 12.08.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

TARSEM LAL, HOUSE NO.1327, CHAMAN COLONY, DHANAS, CHANDIGARH (Workman)

AND

COLLEGE SHOES, S.C.O. NO.30, SECOTR 17-E, CHANDIGARH THROUGH ITS AREA
SALES MANAGER (Management)**AWARD**

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (**hereinafter called 'ID Act'**).

2. Case of the workman in brief is that he was appointed by the management as Stock Boy *vide* letter dated 16th October, 2006 and was later on promoted to the post of Salesman on 01.08.2009 *vide* letter dated 19.08.2009. He worked with the management upto 27.10.2016 when his entry at College Shoes was banned on the pretext of transfer from Chandigarh to Gangtok. The workman was drawing ₹ 13,187/-per month as wages at the time of banning entry in to shop. On 27.10.2016, the workman was issued letter dated 16.10.2016 by the management of M/s Aero Club *vide* which his services were transferred to Gangtok, District Sikkam by the Senior General Manager. According to the letter the workman was to join duty at Gangtok on 22.10.2016. The attendance of the workman used to mark by the management of M/s College Shoes and wages were being paid by M/s College Shoes to the workman. The workman was an employee of M/s College Shoes for all intent & purpose. He has no relation whatsoever with M/s Aero Club and not employee of M/s Aero Club. M/s Aero Club cannot transfer the services of the employee of M/s College Shoes from Chandigarh to Gangtok. M/s College Shoes has no office, work place and branch at Gangtok. Transfer from Chandigarh to Gangtok by the management of M/s Aero Club and refusal of entry in the shop by the management of M/s College Shoes is illegal, wrong, motivated, against the principles of natural justice and unfair labour practice. Banning of entry in the shop and refusal of work by the management of M/s College Shoes, amounts to termination under Section 2(oo) of the ID Act. The management has also violated Section 25-F of the ID Act as no charge sheet was issued, no inquiry was held and no retrenchment compensation was paid to the workman at the time of termination. The workman lodged a complaint dated 05.11.2016 with the Assistant Labour Commissioner, Union Territory Chandigarh. The Assistant Labour Commissioner fixed a number of dates for an amicable settlement but no settlement could be affected due to non-appearance of the management on the last date of hearing. The workman than served upon the management a demand notice dated 09.12.2016 for his reinstatement but the management did not file reply and also did not take the workman back on duty. The matter was referred to Conciliation Officer, Union Territory Chandigarh for his intervention. The management deliberately did not appear on the last date of hearing as he was directed by the Conciliation Officer to produce the attendance and wage record of both the firms. Ultimately, it is prayed that he be reinstated with continuity of service, full back wages and without any change in his service condition.

3. Upon notice, none appeared on behalf of the management as such the management was proceeded against *ex parte*. Thereafter the management filed the application for setting aside order, which was allowed. The management filed the written statement raising preliminary objections that the management had

never terminated the services of the workman rather he was transferred to Gangtok *vide* letter dated 16.10.2016, which was earlier refused to receive and subsequently accepted on 27.10.2016. Instead of joining his duties at transferred place, the workman started remaining absent from his duties with effect from 27.10.2016 without any prior intimation, sanction or approval of leave from the management. Since the workman had already admitted the fact of transfer of his service from Chandigarh to Gangtok, Sikkim so the same cannot be challenged before this Court. The appropriate Government for the same is the Government of Gangtok, Sikkim and not the Government of Chandigarh. On merits, it is pleaded that the services of the were transferred from Chandigarh to Gangtok, Sikkim *vide* transfer letter dated 16.10.2016 and he was asked to join his duties with effect from 23.10.2016 but the workman failed to resume his duty at the transferred place and started remaining absent from his duties. M/s Aero Club and College Shoes are sister concern and the workman is well conscious of this fact. As per terms & condition of the employment of the workman, his services were transferred. The services of the workman were transferred and were never terminated so Section 2(oo) and Section 25-F of the ID Act are not applicable in the present case. Upon receipt of notice from the Assistant Labour Commissioner, the management duly appeared and vindicated its stand. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether this Court has no territorial jurisdiction to try & adjudicate the industrial dispute ? OPM
3. Relief.

5. Thereafter again none appeared on behalf of the management as such the management was proceeded against *ex parte*. In order to prove his case, in *ex parte* evidence the workman examined himself as AW1 and deposed that he was appointed by the management as Stock Boy *vide* letter dated 16.10.2006 and was promoted to the post of Salesman on 01.08.2009 *vide* letter dated 19.08.2009. He remained in uninterrupted employment upto 27.10.2016 when his entry in College Shoes was banned on the pretext of transfer from Chandigarh to Gangtok. He was drawing ₹ 13,187/- per month as wages at the time of termination. He further deposed that on 27.10.2016 he was issued letter dated 16.10.2016 by the management of M/s Aero Club *vide* which his services were transferred to Gangtok, Sikkam by the Senior General Manager of M/s Aero Club. According to the transfer letter he was to join at Gangtok, Sikkam on 22.10.2016. His attendance was used to mark by the management of M/s College Shoes and wages were also being paid by management of M/s College Shoes. He is not employee of M/s Aero Club so M/s Aero Club cannot transfer the services of employees of M/s College Shoes. Refusal of entry into College Shoes by the management amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management had also violated the provisions of section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and no retrenchment compensation was paid to him by the management.

6. Learned representative for the applicant has argued that the workman was appointed by the management *vide* letter dated 16.10.2006 and thereafter he was promoted as Salesman. Later on he was transferred by M/s Aero Club whereas he was working under M/s College Shoes. The management banned the entry of the workman and refused work to him which amounts to termination is retrenchment under Section 2(oo) of the ID Act so action of the management is illegal, wrongful, motivated, unjustified and against the principles of natural justice. He prayed for reinstatement of the workman with full back wages and without change in the service conditions.

7. After giving my careful consideration to the submissions of the workman, I find that the workman himself stepped into the witness box and alleged himself the employee of management i.e. M/s College Shoes and stating that he was appointed by the management as Stock Boy. Later on he was promoted by M/s College Shoes. He has placed on record copy of appointment letter Exhibit 'W1', copy of promotion letter Exhibit 'W2' and transfer order Exhibit 'W3' in which it is clearly mentioned that due to administrative reasons, the services of the workman are transferred from SCO No.30, Sector 17, Chandigarh to shop at Sushil Agarwal Building, Near Gandhi Statue, M. G. Marg, Gangtok, East District Sikkim with effect from 22.10.2016. Apart from these documents the workman has not placed on record any other document to prove that he was not employee of M/s Aero Club, by whom the transfer order has been issued to the workman.

8. In one way he has stated that he has been transferred from Sector 17, Chandigarh to Gangtok, Sikkim on the other hand he has stated that he is working with M/s College Shoes and he has no concern with Ms/ Aero Club whereas in the transfer order letter has been addressed to Mr. Tarsem Lal, Salesman, Woodland Store, SCO No.30, Sector 17, Chandigarh i.e. workman, which has been duly received by the workman.

9. For the sake of argument, if he has not been transferred by employer management then also the workman has failed to prove on record how the management refused the workman to enter and how his case is covered under Section 2(oo) of the ID Act. Further the workman has failed to produce any record to prove that his wages has been paid by M/s College Shoes and he is the employee of M/s College Shoes only and he has no relation with M/s Aero Club. No wages register and attendance register was summoned by the workman to prove his averments. By simply stating that he has been transferred by M/s Aero Club and he is not employee of M/s Aero Club, does not prove the fact that he has been retrenched. No doubt the management is *ex parte* in this case but the workman has to stand at his own legs that there is employer-employee relationship between him & management only i.e. management of M/s College Shoes and M/s Aero Club has no concern with it. So bald statement of the workman is not enough to prove his case. As per record, the workman has been duly transferred from Chandigarh to Gangtok, Sikkim on 22.10.2016 and any management can transfer his employee due to administrative reasons. Hence, the workman had failed to prove that his services were terminated illegally by the management.

10. In the light of discussion made above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 12th August, 2021.

(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal &
Labour Court,
Union Territory Chandigarh.
UID No. PB0095

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th September, 2021

No. 13/1/9792-HII(2)-2021/10914.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 60/2018, dated 18.08.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SANDEEP KUMAR S/O SHRI VARINDER KUMAR R/O HOUSE NO.HL-201, PHASE - 11, MOHALI, DISTRICT MOHALI (Workman)

AND

1. MANAGER/DIRECTOR, M/S HDFC STANDARD LIFE, SCO NO.149-151, GR. 1ST & 2ND FLOOR, SECTOR 43-B, CHANDIGARH.
2. HDFC STANDARD LIFE INSURANCE COMPANY LIMITED, CORPORATE & REGISTERED OFFICE LODHA EXCELUS, 13 FLOOR, APPOLO MILLS COMPOUND, N.M. JOSHI MARG, MAHALAXMI, MUMBAI - 400 011 (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that he raised an industrial dispute by way of demand notice dated 04.04.2018 regarding his illegal termination of service by management. The demand notice was served upon the management but no reply within stipulated period was filed by the management as such the matter was referred to the Assistant Labour Commissioner, Chandigarh, who conducted the conciliation proceedings but no settlement could be arrived at between the parties within stipulated period so the Assistant Labour Commissioner gave the permission to directly file the application before this Tribunal / Court. The workman joined the services with the management on 06.07.2012 as SDMCA on monthly wages of ₹ 15,408/- *vide* appointment letter dated 31.07.2012. During the service period the workman worked with full dedication, devotion, honesty and sincerity for the advancement of the company so he was promoted as Corporate Agency Manager during 2014 and during 2015 he was again promoted as Senior Corporate Agency Manager. During the year 2016, the workman was again promoted as Banc Assurance Manager and during the year 2017 he was given the promotion on the post of the Senior Banc Assurance Manager by the management. On 22.12.2017 he found that the Mconnect app meant for the attendance of the entire employees not allowed him to mark his attendance. The workman contacted his Territory Manager, who could not give any clear answer, upon which he contracted HR Manager, who told him that his services have been terminated but did not disclose the reasons for the same. On 27.12.2017 the workman received a postal letter of termination from the company and shocked to find that the company had terminated his services in an illegal and arbitrary manner without giving him any opportunity of hearing. In the termination letter it is mentioned that an investigation was initiated against the workman, which resulted in the current termination. He was never intimated about any such investigation or inquiry conducted against him till date. No charge sheet was ever issued to the workman. The workman was not issued any notice of termination nor was any notice pay was given to him and even the salary due to him for the month December 2017 has not been paid till date. He had worked for more than 240 days service with the management during twelve months preceding his date of service termination. The workers junior to the workman have been retained in service by the management and they are still working in the company. The workman was working on the post of Senior Banc Assurance Manager on 18.12.2017 when his services were terminated by the management and his last pay drawn was ₹ 39,523/- gross. He was 'workman'

within the meaning of Section 2(s) of the ID Act as no powers of the managerial or supervisory capacity were delegated to him by the management. Order of termination is illegal and not sustainable in the eyes of law and liable to be set aside on the ground that the management had not complied with the Certified Standing Orders. The services of the workman were terminated without giving him any charge sheet, notice, inquiry or paying any compensation. The action of the management is also against the terms & conditions of the appointment letter dated 31.07.2012. The management did not even bother to adhere the statutory provisions of the ID Act. The workman could rebut the allegations made against him as no opportunity to explain his position on clear charges made against him. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages.

3. The management contested the case of the workman and filed written statement that the workman was not allowed to mark his attendance as he was terminated *vide* termination letter dated 18.12.2017. A complaint was received from one customer that although she did not apply for any policy but still she was issued policy. Upon investigation by the RMCU team of the company, it was found that policy was issued through Bancassurance channel (Bancassurance is an arrangement between a bank and an insurance company allowing the insurance company to sell its products to the bank's clients). PCVC is successful through inbound calling but as per the customer, neither she nor her family member attended the PCVC. Further, as per forensic report, voice of PCVC was found matching with the voice of the workman. Since the workman was found at fault so his clarification was sought *vide* email dated 25.10.2017 but the clarification provided by the workman was not found satisfactory therefore, since PCVC was done by the workman and as per forensic report also, voice of the workman matched with voice of PCVC so the services of the workman were rightly terminated as he was found to be guilty. Due opportunity of being heard was afforded to the workman. Since the workman was terminated from service due to fault on his part so he is not entitled for the relief, as prayed. The workman was terminated on the ground of mis-selling and impersonating an employee / distributor in the processes of company / regulator. The same is as per company's declared malpractice matrix Clause F.7 and A.10. The workman was terminated in accordance with the relevant rules. Due opportunity of being heard was given to the workman *vide* email dated 25.10.2017, to which he could not respond satisfactorily. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Shri Kunal Gulati - Deputy Manager as MW1 and Shri Avinash S. R. - Scientific Officer, Clue 4 Evidence Forensic Lab, Bangalore as MW2. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No.1 :

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that he was appointed by the management as SDMCA on 06.07.2012 *vide* letter dated 31.07.2012 and remained in continuous & uninterrupted employment upto 21.12.2017 when his services were illegally & wrongly terminated by the management without assigning any reason & notice. Keeping in view his sincerity, good work and loyalty to the organization, he was promoted on the post of Corporate Agency Manager in the year 2014 and again promoted as Senior Corporate Agency Manager in the

year 2015 and in the year 2017 he was promoted as Banc Assurance Manager and thereafter to the post of Senior Banc Assurance Manager. He also deposed that on 22.12.2017, the mconnect app meant for marking the attendance was not working so he contacted the Territory Manager, who could not give any satisfactory answer. Then he contacted HR Manager, who informed that his service have been terminated but did not disclose the reason. On 27.12.2017 he received letter dated 18.12.2017 *vide* which his services were terminated by the management on the alleged charge of violating the company's code of conduct to have done mis-selling and impersonated an employee / distributor in the process of company / regulator which tantamount to termination in violation of Clause F-7 and A-10 of the Act. He further deposed that he was not given any chance to prove his innocence, no charge sheet was issued, no inquiry was held. The management had also violated the Standing Orders and terms of appointment letter.

8. Learned representative for the workman has argued that he joined the services with the company HDFC on 06.07.2012. During his services he worked with devotion, honesty and sincerity and he was promoted from time to time but on 22.12.2017 he was not allowed to mark his presence when the workman contacted his HR Manager, he was told that his services have been terminated but he was never informed about any investigation and inquiry and he was not charge-sheeted. He further argued that even the salary for the month of December, 2017 was not paid to the workman. Order of termination is contravention with the Certified Standing Orders and against the terms & conditions of the appointment letter dated 31.07.2012. He has already proved his averment in his evidence. He prayed for reinstatement of the workman with continuity of service and full back wages.

9. On the other hand, the management has examined Shri Kunal Gulati - Deputy Manager as MW1, who deposed that the present claim is liable to be dismissed as no cause of action arisen in favour of the workman as he has concealed the relevant facts from this Court and he further submitted that the applicant-workman was terminated as he mis-sold the insurance policy to the customer. A complaint was received from one customer that although she did not apply for any policy. Upon investigation by the RMCU team of the company, it was found that the policy was issued through Bancassurance channel (Bancassurance is an arrangement between a bank and insurance company allowing the insurance company to sell its products to the bank's clients), which the customer denied of purchasing. He further deposed that PVC is successfully through inbound calling but as per the customer, neither she nor her family members attended the PCVC. As per forensic report, voice of PCVC was found matching with the voice of the applicant-workman. The applicant was found at fault therefore his clarification was sought *vide* email dated 25.10.2017. Further the clarification provided by the applicant was not found satisfactory. PCVC was done by the workman and as per forensic report also, voice of the applicant matched with voice of PCVC so the services of the applicant-workman were rightly terminated as he was found to be guilty. He proved copy of forensic report as Exhibit 'R1', copy of email dated 25.10.2017 as Exhibit 'R2', copy of letter dated 07.05.2018 as Exhibit 'R3' which is reply to the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh. He further deposed that the applicant was not allowed to mark his attendance as he was terminated *vide* letter dated 18.12.2017. Due opportunity of being heard was afforded to the applicant-workman. The applicant-workman was terminated from service due to fault on his part. The applicant was terminated on the ground of mis-selling and impersonating an employee / distributor in the processes of company / regulator.

10. The management further examined Shri Avinash S. R. - Scientific Officer, Clue 4 Evidence Forensic Lab, Bangalore as MW2, who deposed that he is summoned witness and had brought the report No.C4E/REP/17-957, dated 17.11.2017 speaker identification report. He proved the report Exhibit 'MW2/A' and identified the signature of Director Phaneedar B. N. as Mark 'A' and signature of Scientific Officer as Mark 'B' on the report.

11. Learned representative for the management has argued that the workman was rightly terminated on the ground of mis-selling and impersonating an employee / distributor in the process of company. E-mail dated 25.10.2017 has already been sent to the workman for clarification. Meaning thereby it was conveyed to the applicant-workman and forensic report is already on record so the applicant has been rightly

terminated. Copy of forensic lab is Exhibit 'R1', copy of email dated 25.10.2017 Exhibit 'R2' and Exhibit 'R3' is reply filed before the ALC. He argued that the workman is not entitled to any relief, as claimed and he prayed for dismissal of the present industrial dispute.

12. After giving my careful consideration on the rival contention of both the sides, I find that the workman filed the present claim in which he has challenged his illegal termination of service made by the management i.e. 18.12.2017 and as per claim he joined the services with the management on 06.07.2012 and he was terminated by the management on 22.12.2017. Onus to prove whether the workman was terminated illegally by the management was on the workman so it is for the workman to prove his own case by standing on his own legs but the workman had not proved on record the appointment letter, through which he has been appointed, and second main document i.e. termination letter whereby his services were terminated on 22.12.2017. He has not proved termination letter on the file on the basis of which the present claim has been filed. The onus to prove issue No.1 i.e. **"whether the services of the workman were terminated illegally by the management"**, was on the workman. But the workman has failed to brought on record and prove material document i.e. termination letter. On the other hand, the management has duly proved the copy of forensic report Exhibit 'R1' and he has also examined the witness Shri Avinash S. R. - Scientific Officer, Clue 4 Evidence Forensic Lab, Bangalore as MW2 who has duly identified the signatures of the Director and Scientific Officer on the report and email dated 25.10.2017 seeking clarification Exhibit 'R2'. The management had also further proved Exhibit 'R3' reply to the Assistant Labour Commissioner filed by the management in the conciliation proceedings regarding issue of termination of services of the workman. Hence, the management has duly proved through oral as well as documentary evidence that the workman has been terminated from the service on the ground of mis-selling and impersonating the employee / distributor in the processes of the company / regulator.

13. Whereas the workman himself admitted during cross-examination that he had received the email from the company dated 25.10.2017 regarding clarification of the sold policy No.17958679 and he had replied the said email. But no reply has been placed on record by the workman. He further admitted that an agreement between the Bank and Insurance Company allowing to sell the products to bank clients and his job was to complete the documentation part.

14. In the light of discussions made above, the management had duly proved on record that due opportunity of being heard was afforded to the workman *vide* email dated 25.10.2017 and the workman was terminated from service due to fault on his part. The workman has failed to prove that his services were terminated illegally by the management. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

15. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 18th August, 2021.

(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal &
Labour Court,
Union Territory Chandigarh.
UID No. PB0095

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Sarita, D/o Ishwar Banerjee, R/o # 1027, Sector 52, Chandigarh, have changed my name to Sarita Banerjee.

[592—1]

I, Madhu, W/o Ishwar Banerjee R/o # 313/2, Maloya Colony, Chandigarh, have changed my name to Madhu Banerjee.

[593—1]

I, Ishwar, S/o Kali Charan, R/o # 313/2, Maloya Colony, Chandigarh, have changed my name to Ishwar Banerjee.

[594—1]

I, Benu Chhabra, W/o Sanjay Gogia, # 1600, Sector 22-B, Chandigarh, changed my name Benu Gogia.

[595—1]

I, Nirmal Pandey, W/o Sh. Basant Kumar Pandey, R/o 3411/1, Sector 46-C, Chandigarh, have change my name to Nirmala Pandey.

[596—1]

I, Bikram Jit, S/o Kheelu Ram, R/o # 2639, Ground Floor, Housing Board Complex, Maloya, Chandigarh, have changed my name from Bikram Jit to Vikram.

[597—1]

I, Saroj Devi, W/o Anil Kumar, R/o 3/5, Ind. Area, Phase-1, C.P.D.O. Complex, Chandigarh, have changed my name to Salochana.

[598—1]

I, Devkinandan Vaid, S/o Sh. Jeet Ram Vaid, R/o H. No. 325, Shashtri Nagar, Mani Majra, Chandigarh, declare that I have changed my name Devkinandan to Devkinandan Vaid. Please Concerned Note.

[599—1]

I, Bakhshish Singh, S/o Karam Singh, # 2142/1, Sector 37-C, Chandigarh, have changed my name to Bakshish Singh.

[600—1]

I, Naval Kumar, S/o Mohan, # 2926, Mauli Jagran Complex, Chandigarh, have changed my name to Nawal Kumar.

[601—1]

I, Rajinder Parshad, S/o Shri Ram Ji Dass Arora, R/o # 1040, Sector 35-B, Chandigarh, have changed my name to Rajinder Arora.

[602—1]

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